

BROOKLYN
CHAGRIN FALLS
CLFV

HEIGHTS
HEIGHTS

DOVER
EAST CLEVELAND
EUCLID
FAIRVIEW
GARFIELD HEIGHTS
GATES MILLS
GLENWILLOW
HIGHLAND HEIGHTS
HUNTING VALLEY
INDEPENDENCE
LAKEWOOD
LINNDALE
LYNDHURST

OLMSTED FALLS

PARMA
PARMA HEIGHTS
PEPPER PIKE
RICHMOND HEIGHTS
ROCKY RIVER
SEVEN HILLS
SHAKER HEIGHTS
SOLOM
SOUTH EUCLID
STRONGSVILLE
UNIVERSITY HEIGHTS
VALLEY VIEW
WARRENSVILLE HEIGHTS
WEST VIEW

AVON

AVON

AV

AVON LAKE

LAKE SHORE

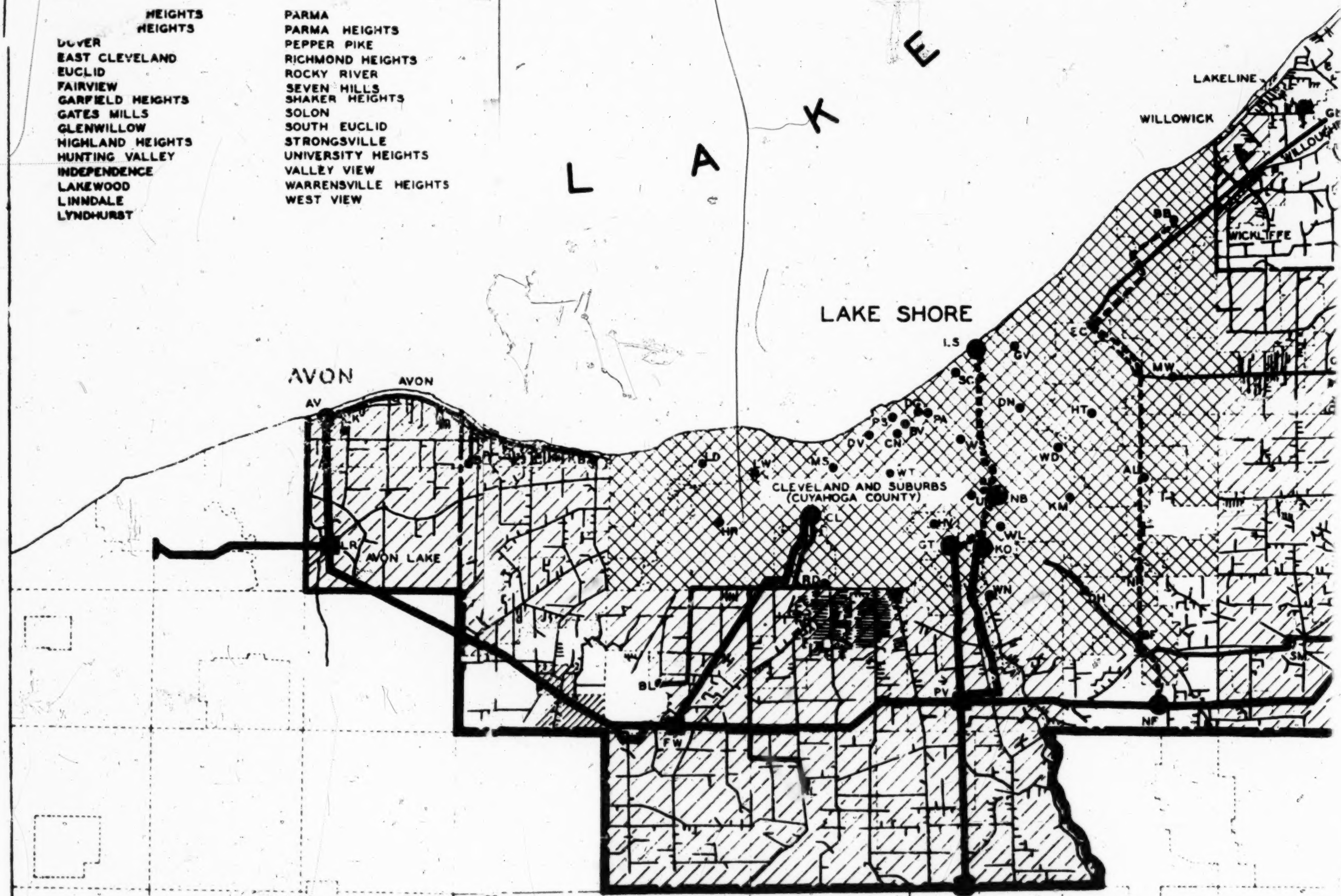
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CLEVELAND AND SUBURBS
(CUYAHOGA COUNTY)

LAKELINE

WILLOWICK

WICKLIFFE



CLERK'S COPY.

Vol. X
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942 1945

No. 721 /

THE NORTH AMERICAN COMPANY, PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT**

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1943.

CERTIORARI GRANTED MARCH 1, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 721

THE NORTH AMERICAN COMPANY, PETITIONER,

vs.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TABLE OF CONTENTS

PETITIONER'S EXHIBITS

NO.	PAGE
21. The Cleveland Electric Illuminating Company System Map	3379
30. The Cleveland Electric Illuminating Company, Organization Chart	3380
31. The Cleveland Electric Illuminating Company, Financing, Security Issues 1892-1940	3381
32. Map of Systems and Service Areas—Wisconsin Electric Power Company, Wisconsin Gas & Elec- tric Company and Wisconsin Michigan Power Company	3385
41. Wisconsin Electric Power Company Organization Chart	3386
42. Wisconsin Gas & Electric Co. Organization Chart, July 2, 1940	3390
43. Wisconsin Michigan Power Co. Organization Chart, July 1, 1940	3391

	Page
51. Union Electric Company of Missouri and Subsidiaries System Map	3392
62. Chart of Officers and Department Heads of Union Group	3393
125. The North American Company Capitalization from Organization to December 31, 1940 and Schedule showing for each of the years 1915 to 1935, inclusive, largest debit balance of combined loan and advance accounts of operating subsidiaries, etc., of The North American Company, The Wisconsin Edison Company, Inc., and North American Edison Company	3394
Order of Consolidation, C. C. A.	3396
Opinion	4000
Order	4011
Clerk's Certificate	4013
Order allowing certiorari	4013

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

SYSTEM MAP

IN DOUBLE CROSS HATCHED AREAS, DISTRIBUTION LINES
ARE TOO NUMEROUS TO BE SHOWN SEPARATELY.

CROSS HATCHED AREAS ARE INCORPORATED

AS OF JULY 1, 1940

(REVISED JULY 26, 1940)



CLEVELAND AND SUBURBS (CUYAHOGA COUNTY)

BAY
BEACHWOOD
BEDFORD
BENTLEYVILLE
BRATENAH
BRECKSVILLE
BROADVIEW HEIGHTS
BROOK PARK
BROOKLYN HEIGHTS
BROOKLYN
CHAGRIN FALLS
CLEV

HEIGHTS
HEIGHTS

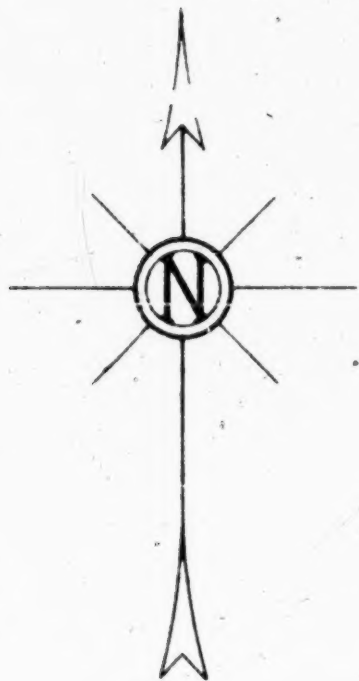
COVER
EAST CLEVELAND
EUCLID
FAIRVIEW
GARFIELD HEIGHTS
GATES MILLS
GLENWILLOW
HIGHLAND HEIGHTS
HUNTING VALLEY
INDEPENDENCE
LAKEWOOD

MAPLE HEIGHTS
MAYFIELD HEIGHTS
MAYFIELD
MIDDLEBURGH HEIGHTS
MORELAND HILLS
NEWBURGH HEIGHTS
NORTH OLMSTED
NORTH RANDALL
NORTH ROYALTON
OLMSTED FALLS
ORANGE
PARKVIEW
PARMA
PARMA HEIGHTS
PEPPER PIKE
RICHMOND HEIGHTS
ROCKY RIVER
SEVEN HILLS
SHAKER HEIGHTS
SOLOM
SOUTH EUCLID
STRONGSVILLE
UNIVERSITY HEIGHTS
VALLEY VIEW
WARRENSVILLE HEIGHTS
WEST VIEW

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1 INCH = 3 MILES

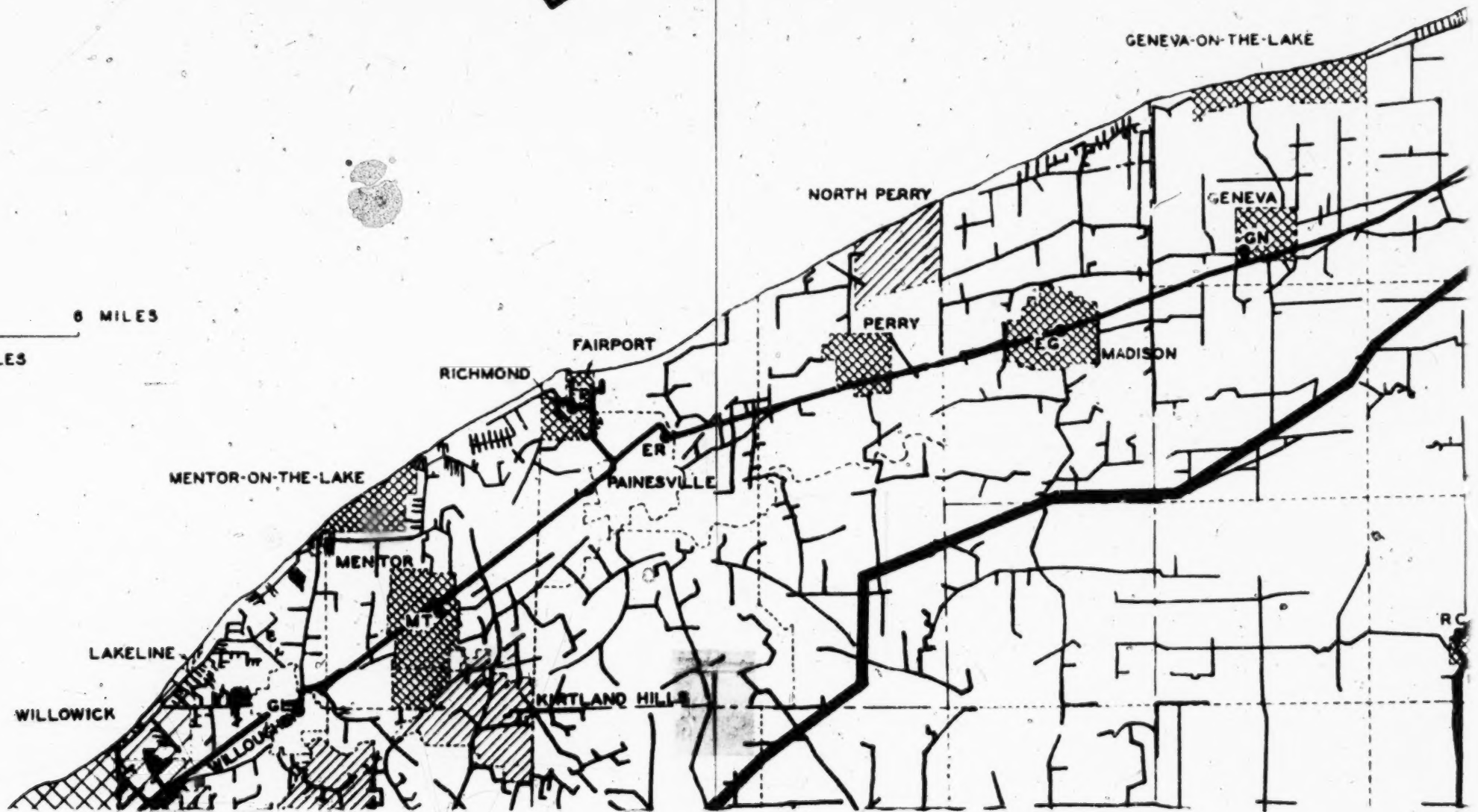
L A K E

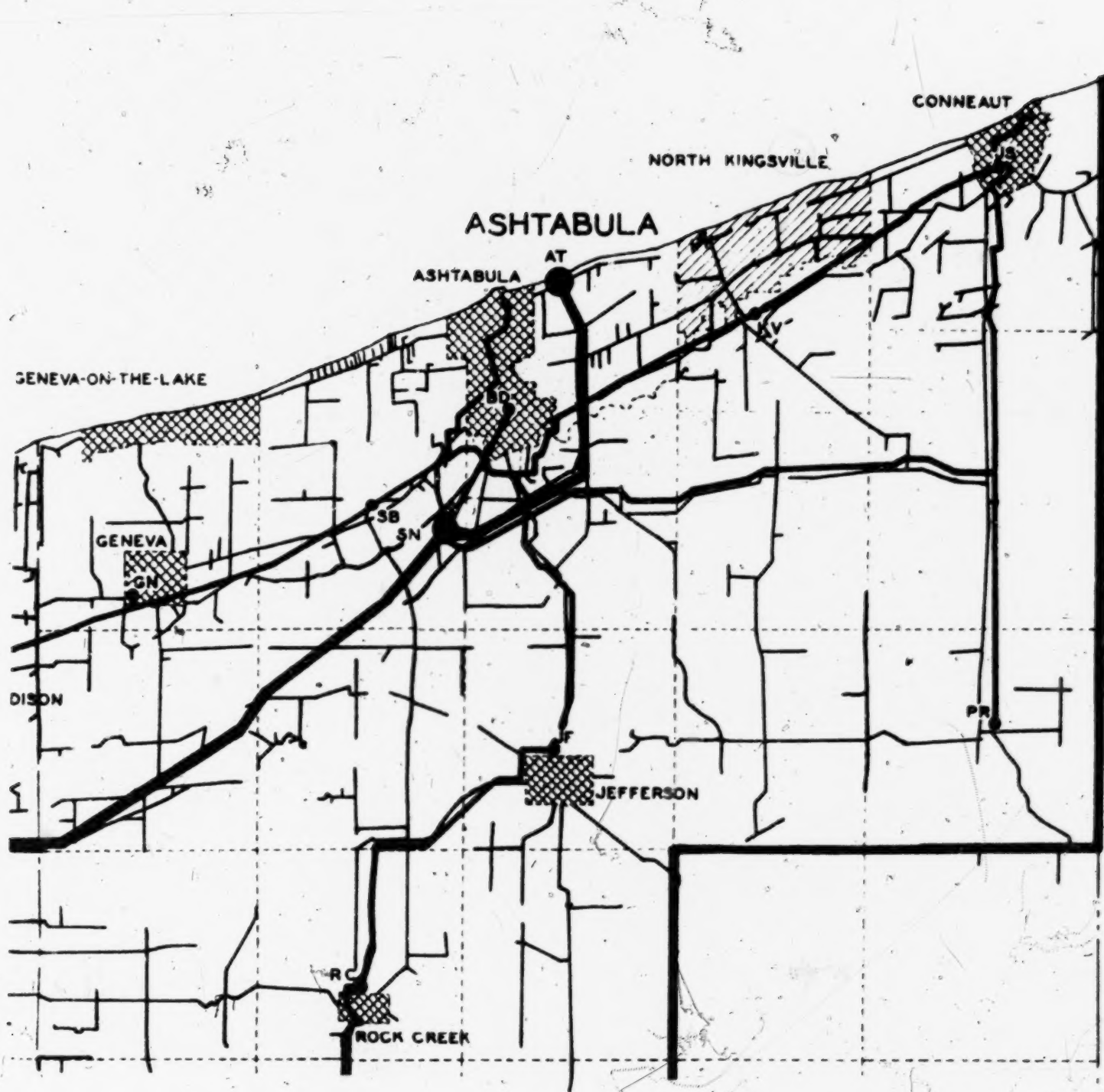


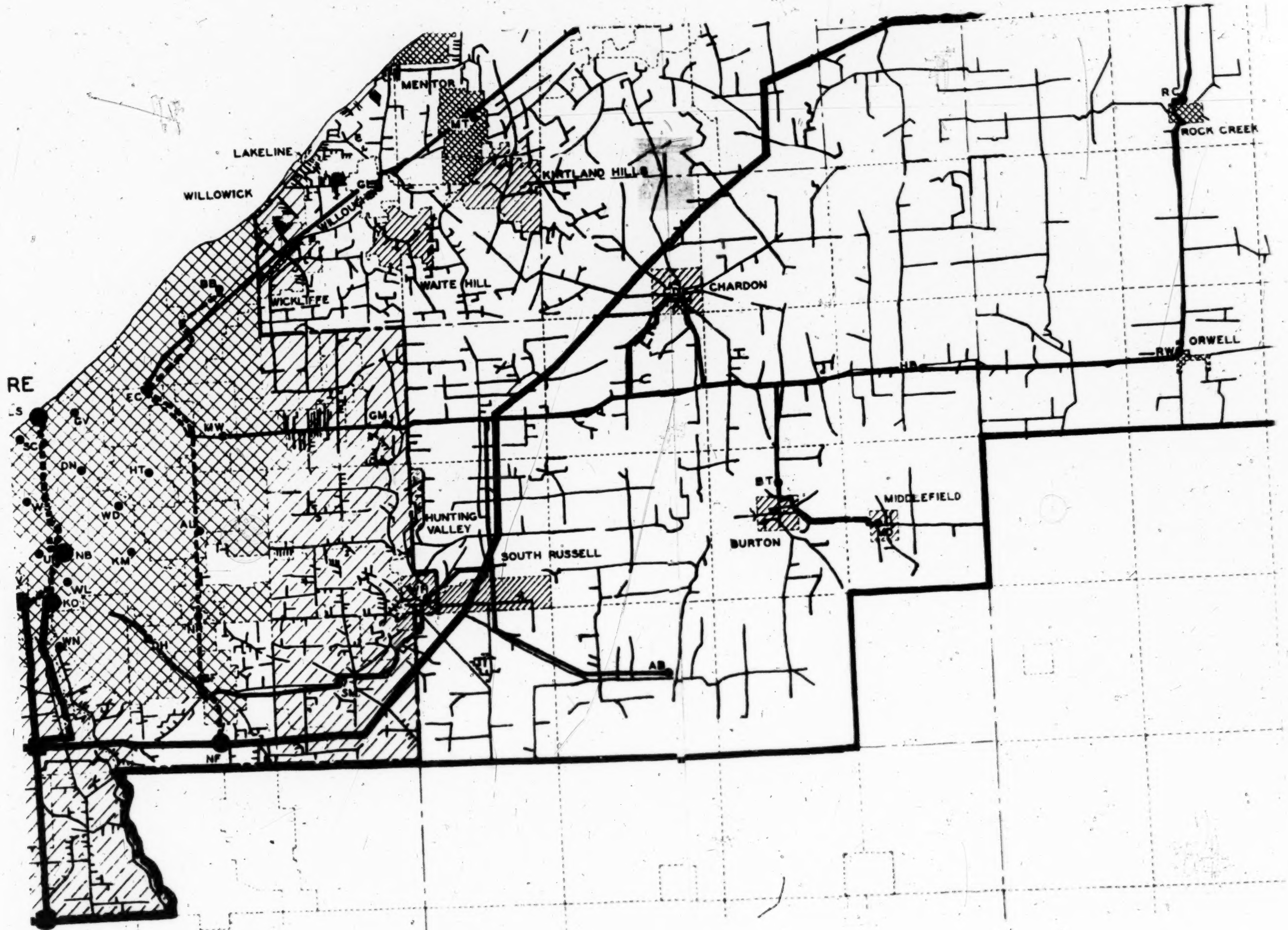


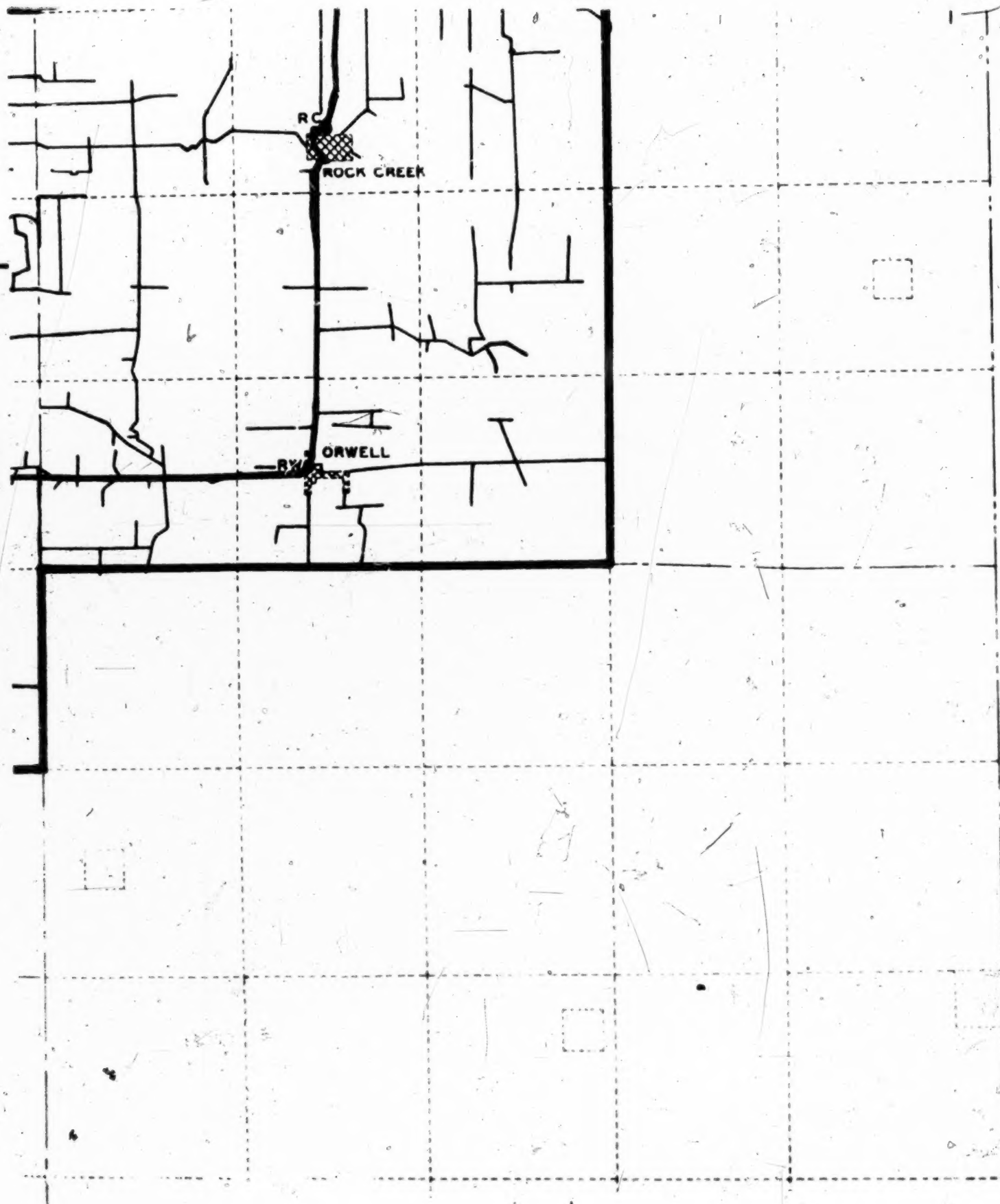
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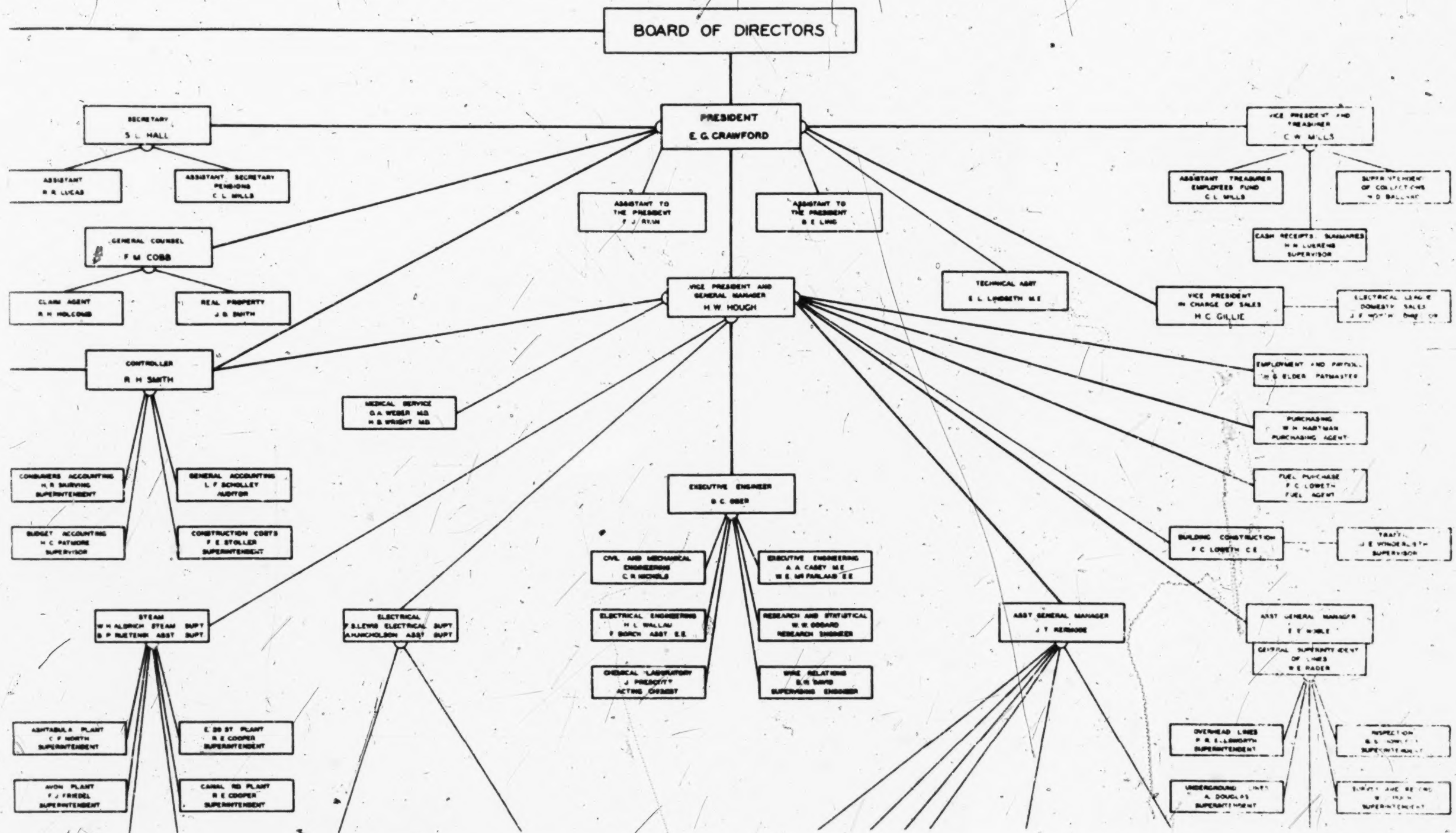


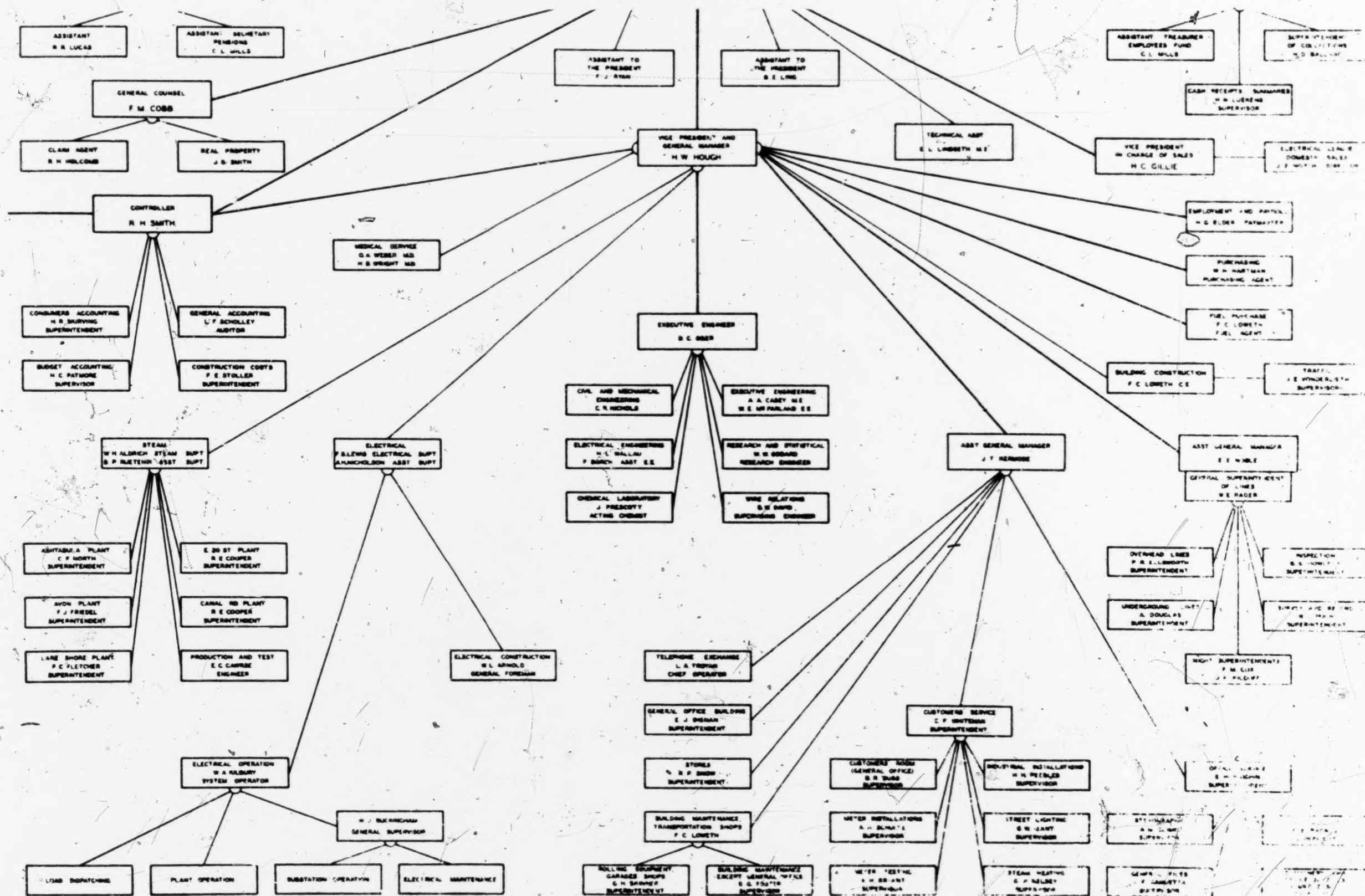






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Petitioner's Exhibit No. 31

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

FINANCING

SECURITY ISSUES 1892—1940

FUNDED DEBT

TITLE OF ISSUE	Year of Issue or Call	Principal Amount	Issue or Call Price to Company
The Cleveland General Electric Company			
6% First Mortgage Bonds, due 1923.....	1893	\$ 310,000	\$100
	1894	500,000	80
	1894	70,000	75
	1895	50,000	89
Redeemed at \$102.....	1898	930,000	102
The Cleveland Electric Illuminating Company			
5% First Mortgage Bonds, due 1927.....	1898	1,150,000	95
	1898	50,000	101 $\frac{1}{4}$
	1901	100,000	106
	1903	45,000	103
	1904	105,000	103
	1906	250,000	97
Redeemed at \$110.....	1909	1,280,000	110
Redeemed at \$110.....	1910	420,000	110
First and General Mortgage 6% Bonds, due 1913.....	1908	1,250,000	94
	1908	250,000	96
Redeemed at Par.....	1909	810,000	100
Redeemed at Par.....	1910	690,000	100
First Mortgage 5% Gold Bonds, due 1939...	1909	2,893,000	99
	1910	200,000	100
	1910	1,007,000	99
	1911	5,500	100
	1911	894,500	98
	1912	1,500,000	98 $\frac{1}{2}$
	1914	600,000	97
	1914	100,000	97 $\frac{1}{2}$
	1916	300,000	98 $\frac{3}{4}$
	1916	1,000,000	100
	1917	2,000,000	100
	1917	50,000	97 $\frac{1}{2}$
	1917	25,000	92 $\frac{1}{2}$
	1917	1,490,000	95
	1917	3,935,000	85 $\frac{1}{2}$
	1919	2,500,000	91 $\frac{1}{2}$
Redeemed at \$102.....	1935	18,500,000	102

Italics denote red figures.

Petitioner's Exhibit No. 31

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

FINANCING

SECURITY ISSUES 1892—1940

(Continued)

TITLE OF ISSUE	Year of Issue or Call	Principal Amount	Issue or Call Price to Company
7% First Mortgage Collateral Bonds, due 1935.....	1920	\$ 5,000,000	\$ 88.96
Sinking Fund Redemption.....	1920	50,000	100
Sinking Fund Redemption.....	1920	47,000	100
Sinking Fund Redemption.....	1921	11,000	105 $\frac{1}{8}$
Sinking Fund Redemption.....	1921	21,000	105
Sinking Fund Redemption.....	1921	1,000	100 $\frac{3}{8}$
Sinking Fund Redemption.....	1922	15,000	105
Sinking Fund Redemption.....	1922	1,000	104 $\frac{3}{4}$
Sinking Fund Redemption.....	1922	1,000	103
Redeemed at \$102.....	1922	4,853,000	102
7% Sinking Fund Gold Debenture Bonds, due 1941, callable 1931.....	1921	5,000,000	89.1943
Redeemed at \$105.....	1931	5,000,000	105
5% General Mortgage Bonds, Series A, due 1954.....	1924	11,500,000	97
Redeemed at \$105.....	1935	11,500,000	105
Series B, due 1961.....	1926	10,000,000	99 $\frac{1}{2}$
Redeemed at \$107 $\frac{1}{2}$	1935	10,000,000	107 $\frac{1}{2}$
First Mortgage 3 $\frac{3}{4}$ % Bonds, due 1965.....	1935	40,000,000	100 $\frac{1}{2}$
Redeemed at \$105.....	1940	40,000,000	105
First Mortgage 3% Bonds, due 1970.....	1940	50,000,000	103 $\frac{1}{2}$

* * * *

Outstanding on August 1, 1940,
First Mortgage 3% Bonds, due
1970.....

50,000,000

Italics denote red figures.

Petitioner's Exhibit No. 31

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

FINANCING

SECURITY ISSUES 1892—1940

(Continued)

PREFERRED STOCK

TITLE OF ISSUE	Year of Issue or Call	Par or Stated Value	Issue or Call Price to Company
6% Preferred Stock, Authorized 1892-97, Par Value \$100, non-callable.....	1893	\$ 249,700	\$100
	1894	300	100
	1894	130,000	100
	1895	120,000	100
(Subscription rights, 1 for 3 $\frac{1}{3}$).....	1898	150,000	95
(Subscription rights, 1 for 4 $\frac{1}{3}$).....	1899	142,400	105
	1899	7,600	115
Exchange for Common.....	1929	800,000	100
8% Cumulative Preferred Stock,	1920	27,400	97
Par Value \$100.....	1920	3,972,600	92
Redeemed at average price \$100.88.....	1921	39,400	100.88
Redeemed at \$110.....	1923	3,960,600	110
8% Preferred Stock, Authorized 1923,			
Par Value \$100.....	1923-4	10,000,000	97.43
	1924-5	5,281,700	99
Redeemed at \$110.....	1935	15,281,700	110
Series Preferred Stock, \$4.50 Series			
No Par			
Reorganization and Readjustment.....	1935	10,217,880	
	1935	15,281,700	100 $\frac{3}{4}$
Retirement of .8 shares.....	1936	80	100
Retirement of 6 shares.....	1937	600	100

* * * *

Outstanding on August 1, 1940,
Preferred Stock, \$4.50 Series—
254,989 shares.....

\$25,498,900

Italics denote red figures.

Petitioner's Exhibit No. 31

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

FINANCING

SECURITY ISSUES 1892—1940

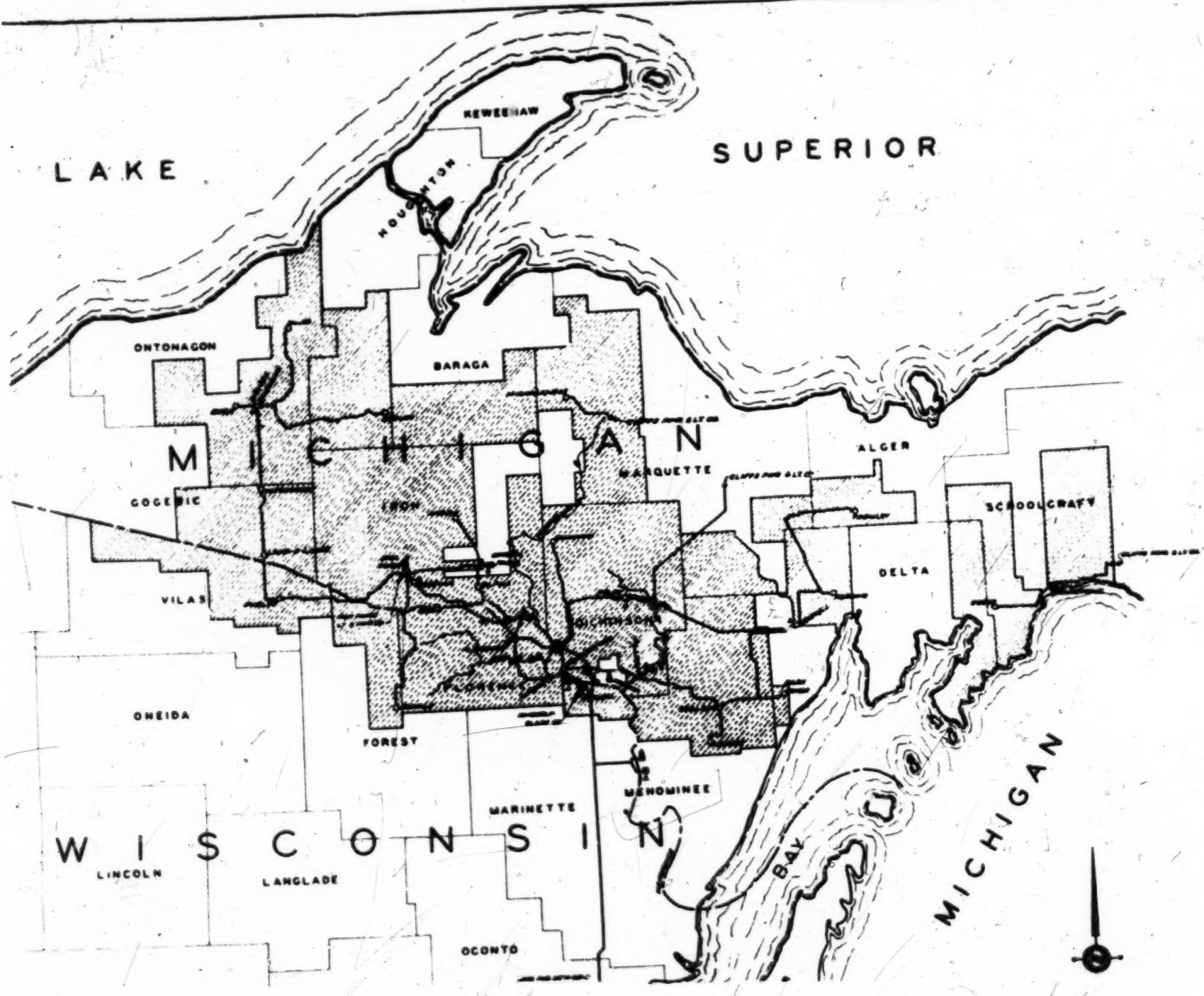
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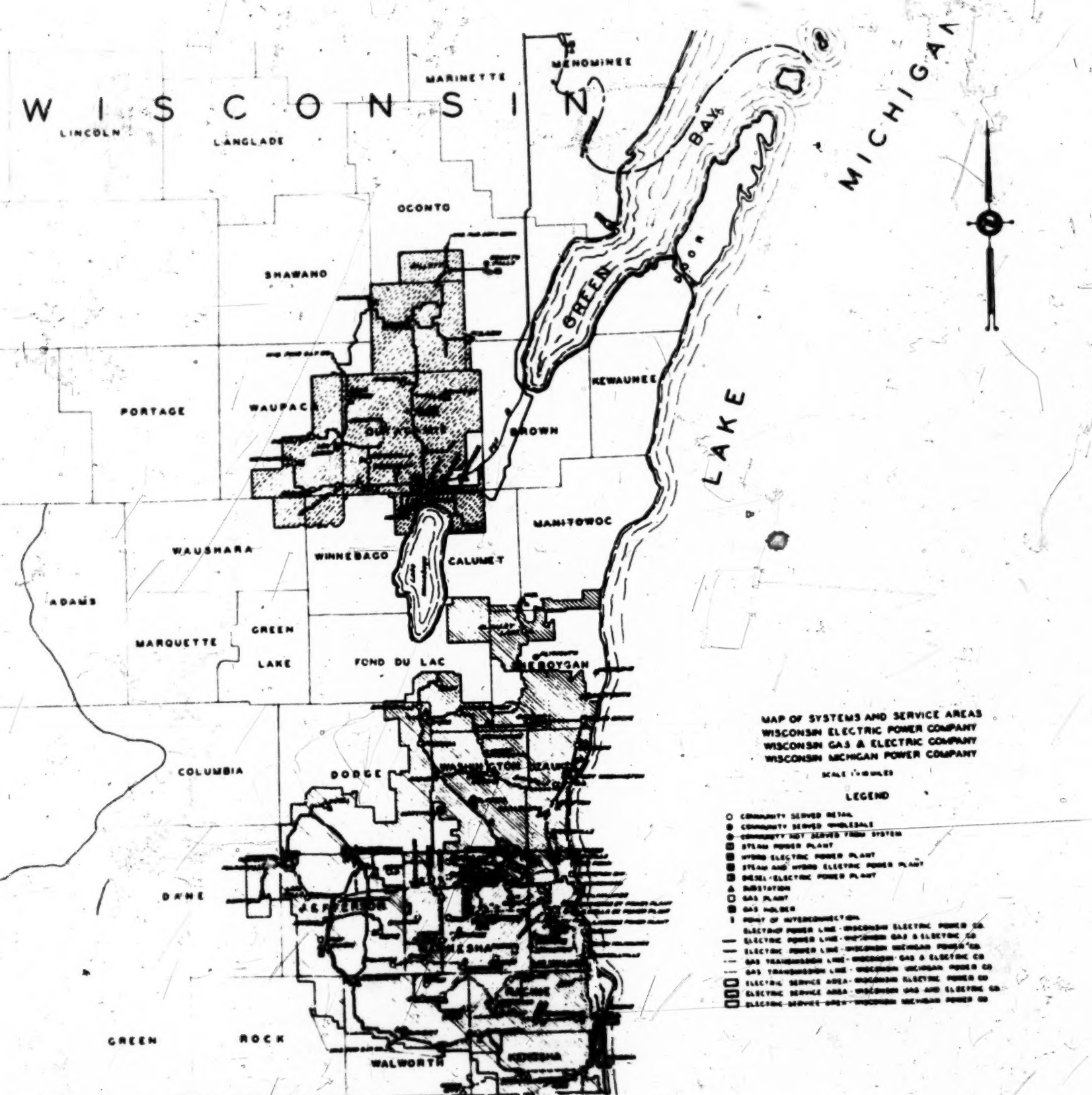
COMMON STOCK

TITLE OF ISSUE	Year of Issue or Call	Par or Stated Value	Issu Price to Com
Common Stock, Par Value \$100	1893	\$ 500,000	\$100
	1898	150,000	100
(20% Stock Dividend)	1901	129,300	100
(Subscription rights, 1 for 3)	1901	258,000	100
(Subscription rights, 1 for 2)	1902	518,600	100
(10% Stock Dividend)	1903	153,400	100
(Subscription rights, 1 for 6 $\frac{2}{3}$)	1904	262,400	100
(6% Stock Dividend)	1905	116,000	100
(Subscription rights, 1 for 5)	1905	423,800	100
(5% Stock Dividend)	1906	122,900	100
(Subscription rights, 1 for 3 $\frac{1}{3}$)	1906	792,900	100
(Subscription rights, 1 for 10)	1907	412,100	100
(6% Stock Dividend)	1909	222,600	100
(Subscription rights, 1 for 10)	1909	498,400	100
(7% Stock Dividend)	1910	306,600	100
(Subscription rights, 1 for 6 $\frac{2}{3}$)	1910	864,600	100
(Subscription rights, 1 for 5)	1911	1,307,800	100
	1911	300,000	100
(Subscription rights, 1 for 5 $\frac{5}{9}$)	1913	1,463,800	100
(Subscription rights, 1 for 10)	1914	960,300	100
(Subscription rights, 1 for 2)	1922	5,254,300	100
	1922	27,500	110
Common Stock, Par Value \$100			
(Subscription rights, 1 for 10)	1924	1,580,700	150
	1925	3,800	150
	1928	16,629,800	
Common Shares, without Par Value	1928	16,629,800	
Transfer from Surplus	1928	16,629,800	
Exchange	1929	800,000	
(Subscription rights, 1 for 2)	1930	17,029,800	20
Common Shares, without Par Value			
Reorganization and Readjustment	1935	51,089,400	
Common Stock, without Par Value			
Reorganization and Readjustment	1935	40,871,520	
Retirement of .7 shares	1936		
Retirement of 3 shares	1937		

* * * *

Outstanding on August 1, 1940,
Common Stock—2,324,564





Petitioner's Exhibit No. 41**WISCONSIN ELECTRIC POWER COMPANY
ORGANIZATION CHART**StockholdersBoard of DirectorsExecutive CommitteeS. B. Way, PresidentG. W. Van Derzee, Vice President and General ManagerG. G. Post, Vice President in Charge of PowerElectric Distribution*Power Plant*Plant Engineering*F. A. Coffin, Vice President and Sales ManagerSales*Advertising*L. F. Seybold, Vice President and Research EngineerOperating Research Bureau*Purchasing & Stores*Printing*F. J. Boehm, Secretary & TreasurerAccounting*—A. J. Bohl, Controller, Asst. Sec. & Asst. Treas.Asst. Secretary and Asst. Treasurer*—L. M. La PorteAsst. Secretary and Asst. Treasurer—J. G. JohansenJ. H. Lucas, Asst. Vice PresidentE. J. Steinberg, Executive AssistantA. J. Whitcomb, AttorneyE. W. Miller, Chief SurgeonV. E. Huntzicker, Real Estate AgentShaw, Muskat & Paulsen, Counsel for Company

* See subsequent sections for further detail.

*Petitioner's Exhibit No. 41*WISCONSIN ELECTRIC POWER COMPANY
ORGANIZATION CHART

(Continued)

G. Post, Vice President in Charge of PowerC. F. John, Technical AssistantElectric Distribution DepartmentW. E. Gundlach, Chief Electrical EngineerConstruction Division, F. E. Wilterding, Superintendent of ConstructionConstruction, Maintenance & InstallationOperating Division, O. M. Ward, Superintendent of OperationLoad Dispatchers, Station Operation, Trouble Service & Local AgentsEngineering Division, C. D. Brown, Electrical EngineerElectrical Testing Division, J. E. Miller, General ForemanGeneral Office Division, W. S. Wilder, Technical AssistantPower Plant DepartmentFred Dornbrook, Chief Engineer of Power PlantsAsst. Chief Engineers, G. J. Lawrenz and M. K. DrewryOperation

Lakeside Power Plant, George Hummel, Engineer-in-Charge
 Fort Washington Power Plant, Harry Shaver, Engineer-in-Charge
 Commerce Street Power Plant, Frank Leach, Engineer-in-Charge
 East Wells Street Power Plant, Thomas Franks, Engineer-in-Charge
 Stephenson Building Power Plant, Edward Haas, Engineer-in-Charge
 Racine Power Plant, H. H. Leuschke, Engineer-in-Charge
 Equipment Testing, Maurice Fitze, Test Engineer
 Chemical and Physical Laboratory, W. O. Pflaum, Chief Chemist

MaintenanceMaster Mechanic, Henry DornbrookConstruction and DesignChief Designer, H. H. MacMillenHeating DivisionSuperintendent, Henry WarhanekPlant Engineering DepartmentF. A. Lubber, Chief Architectural EngineerDrafting and Engineering, H. E. Mundt, Structural DesignerSpecifications, F. C. Schroeder, Building EngineerBuilding Maintenance, E. A. Bolzendahl, Building SuperintendentHeating, Ventilating and Air Conditioning, E. W. May, Mechanical Engineer

*Petitioner's Exhibit No. 41*WISCONSIN ELECTRIC POWER COMPANY
ORGANIZATION CHART

(Continued)

F. A. Coffin, Vice President and Sales ManagerSales DepartmentAppliance Service, C. M. Berry, Superintendent of Appliance ServiceGeneral Office, J. Mackowski, Assistant to Sales ManagerHome Service Bureau, Mrs. V. Ellwood, DirectorLighting and Rural Sales, I. L. Illing, Illuminating EngineerMerchandise Stores, Elmer Stocker, Superintendent of Merchandise SalesPower Sales, O. O. Wagley, Superintendent of Power SalesRange Sales, N. Christopherson, Superintendent of Range SalesWater Heater Sales, M. Zass, Superintendent of Water Heater SalesAdvertising DepartmentF. E. Eriksen, Advertising ManagerL. F. Seybold, Vice President and Research EngineerOperating Research BureauAsst. Research Engineer, John DockendorfTransportation Engineering Division, C. F. Balch, SupervisorInternal Auditing Division, R. J. Mathews, SupervisorStatistical Division, R. W. Schmelz, SupervisorSpecial Investigations Division, E. H. Schmidtman, SupervisorAsst. Research Engineer, F. L. LarkinWage Incentives, Standards, Methods and Job Analysis Division,
H. P. Chamberlin, SupervisorBonus Calculation Division, E. W. Gottschalk, SupervisorEmploye Selection and Training Division, A. H. Nielsen, Education
DirectorEmployment Office, W. Pohland, Employment AgentAsst. Research Engineer, A. GruhlTax Division, C. J. Trudeau, Supervisor

*Petitioner's Exhibit No. 41*WISCONSIN ELECTRIC POWER COMPANY
ORGANIZATION CHART -

(Continued)

L. F. Seybold, Vice President and Research Engineer (Continued)Purchasing and Stores DepartmentF. V. Benz, Purchasing AgentAsst. Purchasing Agent, A. A. MeisenheimerPurchasing, Stores and Stock Records, & Public Service Building
OperationPrinting DepartmentB. F. Dahlman, SuperintendentF. J. Boehm, Secretary and TreasurerAccounting DepartmentA. J. Bohl, Controller, Assistant Secretary & Assistant TreasurerL. M. LaPorte, Assistant Secretary and Assistant TreasurerCustomers, Accounting Division, A. G. Neumann, Auditor of Customers
AccountsReport and Development Division, T. W. Gehle, SupervisorMechanical Accounting Division, H. J. Fillhouer, SupervisorPay roll and Timekeeping Division, J. A. Wolfrum, PaymasterCashiers Division, J. W. Mielke, CashierGeneral Accounting Division, W. A. Gauger, General AuditorAccounts Payable Division, S. R. Hatch, Auditor of DisbursementsProperty & Plant Division, R. L. Stiles, SupervisorLegal Division, R. J. Schimmel, AttorneySecurities Division, W. J. Muth, Supervisor

Petitioner's Exhibit No. 42

ORGANIZATION CHART
WISCONSIN GAS & ELECTRIC CO.

July 2, 1940

STOCKHOLDERS

BOARD OF DIRECTORS

PRESIDENT—S. B. WAY

VICE PRESIDENT—G. W. VAN DERZEE

VICE PRESIDENT—L. F. SEYBOLD

VICE PRESIDENT & GENERAL MANAGER—S. B. SHERMAN

VICE PRESIDENT—D. G. EVANS

EXECUTIVE ASSISTANT—G. N. BINGEN

MGR. RACINE DIV.—R. I. SWIFT

MGR. KENOSHA DIV.—H. M. PAULEY

MGR. WESTERN DIV.—W. D. LEONARD

MGR. NORTHERN DIV.—W. E. KEUHLTHAU

CHIEF ACCOUNTANT—G. F. BETTS

CHIEF ENGINEER—J. A. TYVAND

PLANT SUPT.—H. R. BROKER

ASST. SEC.—W. L. HAIGHT

PROMOTIONAL SUPERV.—J. H. DUNHAM

RESIDUAL SALES—

SEC. & TREAS.—F. J. BOEHM

ASST. SEC. & ASST. TREAS.—A. J. BOHL

ASST. SEC. & ASST. TREAS.—L. M. LAPORTE

ASST. SEC. & ASST. TREAS.—J. G. JOHANSEN

ASST. SEC. & ASST. TREAS.—J. I. ALLEN

Rate Analysis and Development
Service Rules and Regulations
Special Investigations

W. G. & E. CO. ELECTRIC & GAS
W. E. P. CO. ELECTRIC

Operation-Maintenance & Construction
Customer Billing
Customer Service
Collections
Merchandising

ELECTRIC-GAS-HEATING

Operation-Maintenance & Construction
Customer Billing
Customer Service
Collections
Merchandising

Corporation Accounting
Pay Roll
Bonus Calculation
Storeroom Records
Audits
Procedures
Reports
Taxes

(Gas Plant Operation & Maintenance)

New Business
Merchandising
Advertising

Corporate Records
Collections
Budgets and Forecasts
Cash Receipts and Disbursements
Securities and Notes
Insurance
Corporate Releases
Release of Procedures

tion

Purchasing and Stores
Gain Sharing Plans
Office Service and Filing
Job Evaluation

tion

ELECTRIC-GAS-TRANSPORTATION

Operation-Maintenance & Construction
Customer Billing
Customer Service
Collections
Merchandising

ELECTRIC

Operation-Maintenance & Construction
Customer Billing
Customer Service
Collections
Merchandising

Engineering
Operating Records
Property Accounting
Special Reports

Personnel Relations
Labor Relations
Safety
Right of Way

(Sale of Gas Residuals)

Petitioner's Exhibit No. 43

ORGANIZATION CHART
WISCONSIN MICHIGAN POWER CO.

July 1, 1940

STOCKHOLDERS

BOARD OF DIRECTORS

PRESIDENT—S. B. WAY

V. PRES.—G. W. VAN DERZEE

V. PRES.—L. F. SEYBOLD

V. PRES.—

V. PRES. & GEN. MGR.—W. E. SCHUBERT

ASST. GEN. MGR.—M. G. GORROW

MGR. SO. DIV.—F. E. VOLKMAN

MGR. NO. DIV.—L. W. WYSS

PURCH. & STORES—H. H. DAMM

ASST. SEC. & ASST. TREAS.—L. R. GRESSENZ

SEC. & TREAS.—F. J. BOEHM

ASST. SEC. & ASST. TREAS.—A. J. BOHL

ASST. SEC. & ASST. TREAS.—L. M. LAPORTE

ASST. SEC. & ASST. TREAS.—J. G. JOHANSEN

ASST. SEC. & ASST. TREAS.—L. E. HOLLFENBECK

CHIEF ENGR.—C. E. HARGER

ASST. CHIEF ENGR.—J. S. WELLS

EXEC. ASST.—C. E. SCHAEFER

PROM. OF BUS. MGR.—R. E. WILLIAMS

ELECTRIC-GAS-TRANS.

OPERATION MAINT. & CONST.
CUSTOMER BILLING
CUSTOMER SERVICE
COLLECTIONS

ELECTRIC

OPERATION MAINT. & CONST.
CUSTOMER BILLING
CUSTOMER SERVICE
COLLECTIONS

CORP. RECORDS
CENTRAL FILING
CASH STATEMENTS
COLLECTIONS
PAYMENTS
SECURITIES
INSURANCE
REPORTS
PROCEDURES

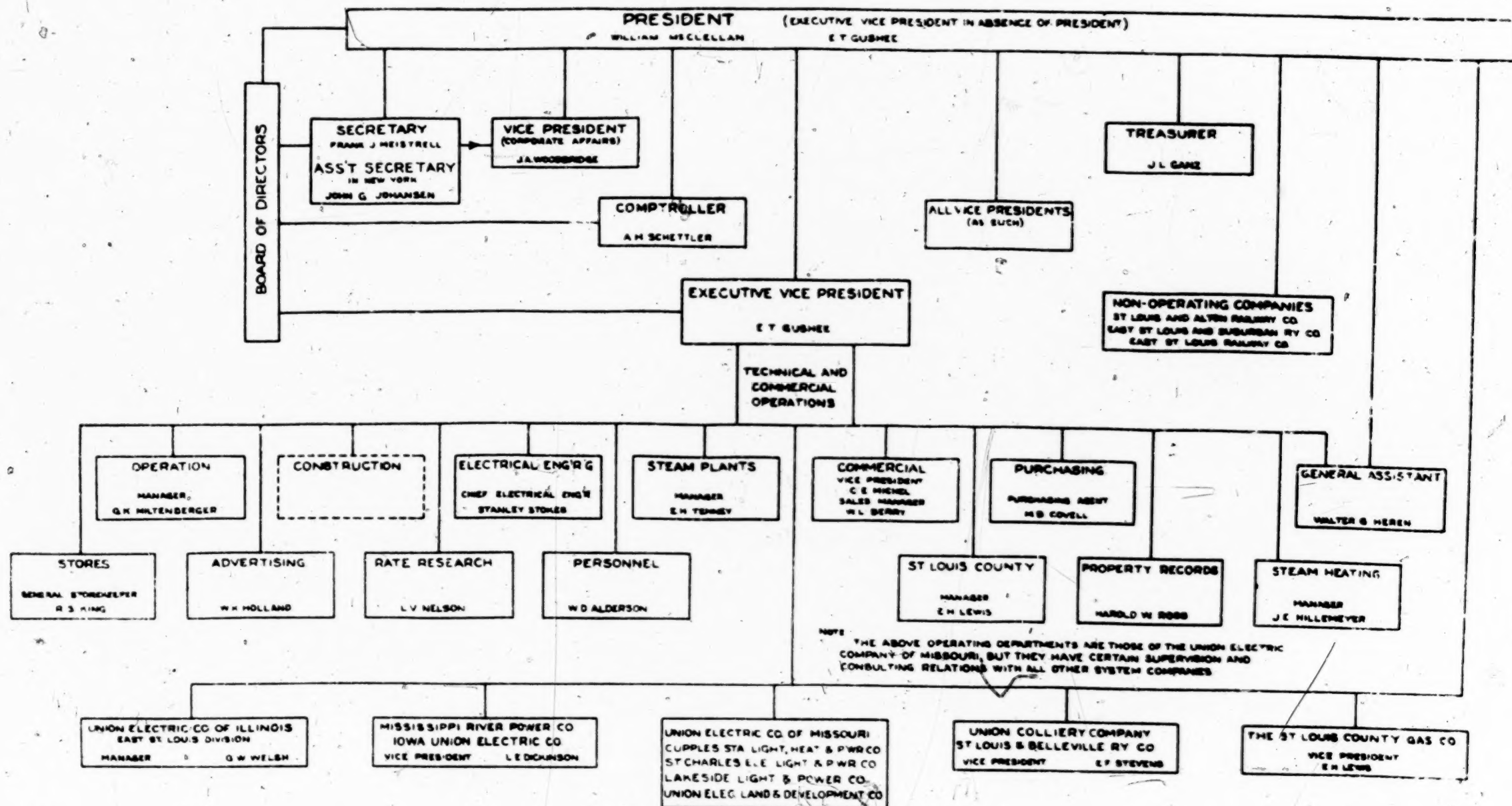
AUDITS
PAYROLL
CORP. ACCOUNTING

ENGINEERING
OPERATING PLANT RECORDS
SPECIAL REPORTS
SO. DIV. PLANT OPERATION
PROPERTY ACCOUNTING

PERSONNEL RELATIONS
LABOR RELATIONS

NEW BUSINESS
MERCHADISING
ADVERTISING

*Including No. Div. Power Plants.



LEGEND

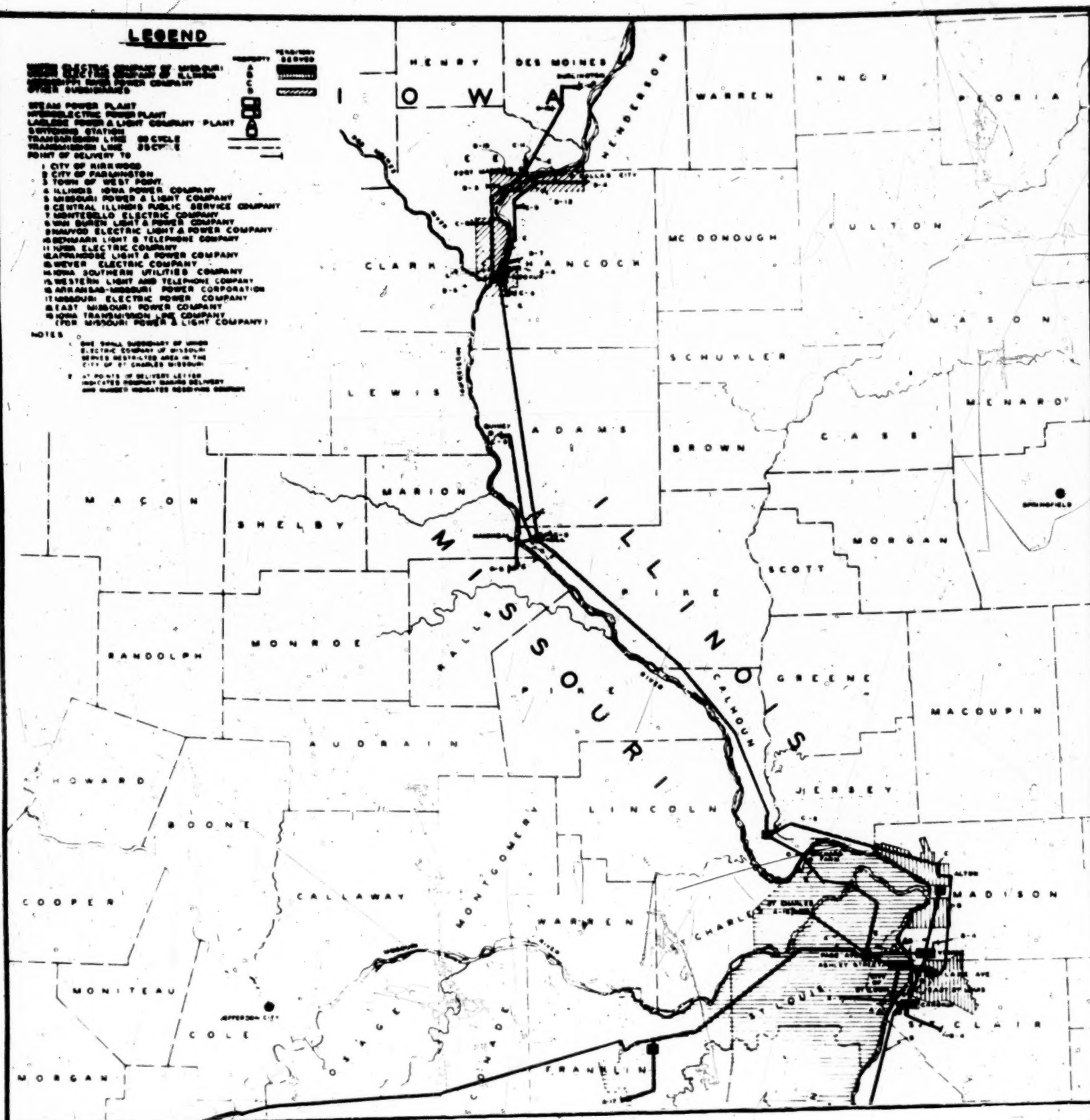
STEAM POWER PLANT
HYDRO-ELECTRIC POWER PLANT
LARGE POWER & LIGHT COMPANY PLANT
SUBSTATION
TRANSMISSION LINE
CYCLE
TRANSMISSION LINE
POINT OF DELIVERY TO



- 1 CITY OF KIRKWOOD
- 2 CITY OF PARNASSUS
- 3 TOWN OF WEST POINT
- 4 ILLINOIS POWER COMPANY
- 5 MISSOURI POWER & LIGHT COMPANY
- 6 CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
- 7 MONTICELLO ELECTRIC COMPANY
- 8 MISSOURI ELECTRIC COMPANY
- 9 MISSOURI ELECTRIC LIGHT & POWER COMPANY
- 10 MISSOURI ELECTRIC LIGHT & POWER COMPANY
- 11 MISSOURI ELECTRIC COMPANY
- 12 MISSOURI ELECTRIC COMPANY
- 13 MISSOURI ELECTRIC COMPANY
- 14 MISSOURI ELECTRIC COMPANY
- 15 MISSOURI ELECTRIC COMPANY
- 16 MISSOURI ELECTRIC COMPANY
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- 18 MISSOURI ELECTRIC COMPANY
- 19 MISSOURI ELECTRIC COMPANY
- 20 MISSOURI ELECTRIC COMPANY

NOTES

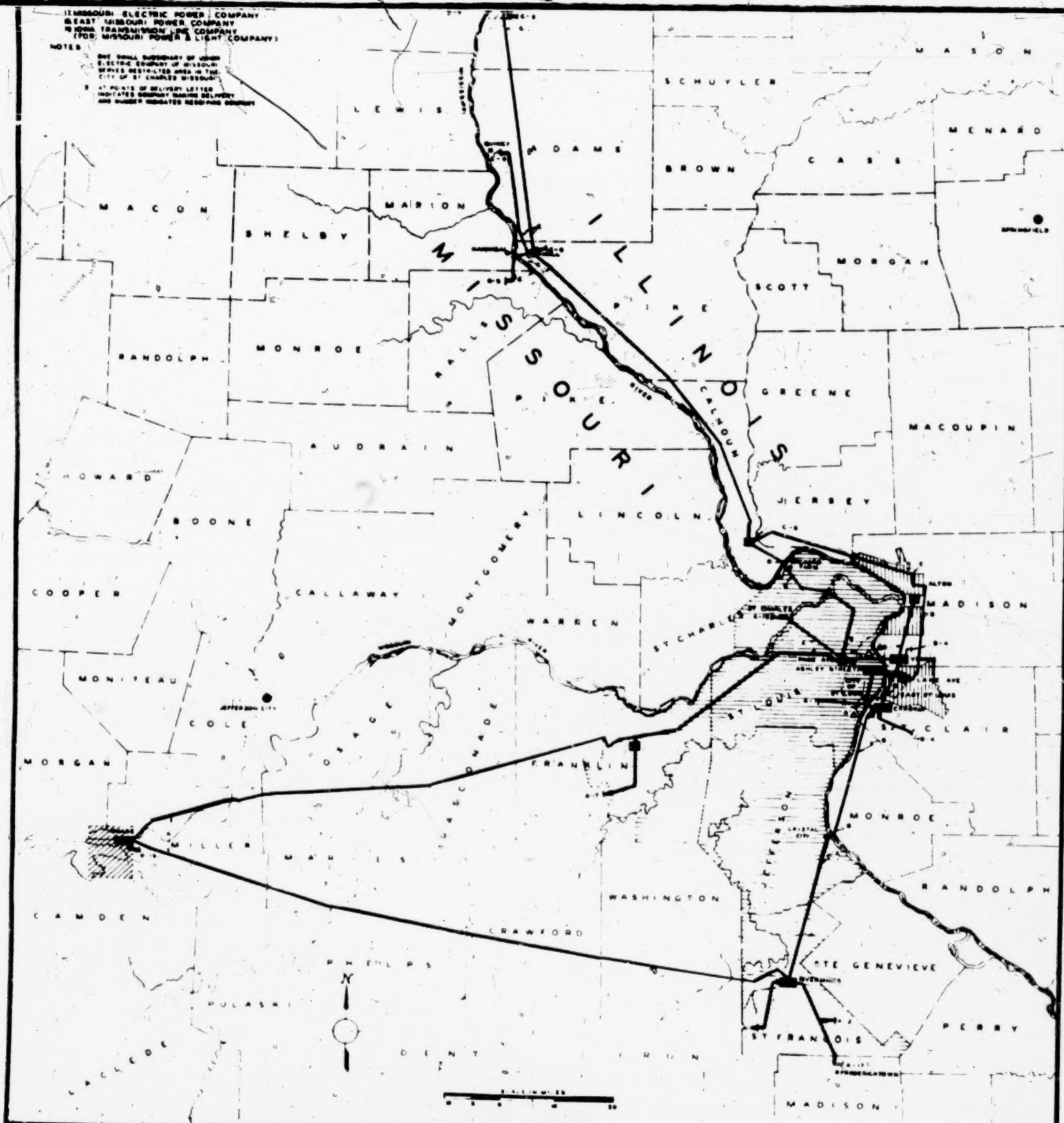
1. THE SMALL SUBSTATION OF MISSOURI ELECTRIC COMPANY OF MISSOURI SERVED DISTRICTED AREA IN THE CITY OF ST. LOUIS, MISSOURI.
2. AT POINTS OF DELIVERY LETTER INDICATED POWER TAKING DELIVERY AND NUMBER INDICATED RECEIVED POWER.



MISSOURI ELECTRIC POWER COMPANY
 EAST MISSOURI POWER COMPANY
 ST. LOUIS TRANSMISSION LINE COMPANY
 (FOR MISSOURI POWER & LIGHT COMPANY)

NOTES

1. ONE SMALL SUBSTATION OF UNION ELECTRIC COMPANY OF MISSOURI BEING RESTRICTED AREA IN THE CITY OF ST. LOUIS
2. AT POINTS OF DELIVERY LETTER INDICATES COMPANY MAKING DELIVERY AND NUMBER INDICATES READING COMPANY



SYSTEM MAP
 UNION ELECTRIC COMPANY OF MISSOURI
 AND SUBSIDIARIES

Petitioner's Exhibit No. 125

THE NORTH AMERICAN COMPANY

CAPITALIZATION FROM ORGANIZATION TO DECEMBER 31, 1940

Date	Common Stock	6% Preferred Stock	5 3/4% Preferred Stock	Collateral Promissory Notes	Collateral Trust Gold Notes	Debentures	Paid-in Surplus	Earned Surplus	Total	Ratio of Common Stock & Surplus to Total Capitalization
August 13, 1890	\$ 40,000,000.00								\$40,000,000.00	100
May 31, 1891	40,000,000.00							\$-437,448.75	39,562,551.25	100
May 31, 1892	40,000,000.00							-474,779.13	39,525,220.87	100
May 31, 1893	40,000,000.00							-374,442.36	39,625,557.64	100
May 31, 1894	40,000,000.00							-453,425.56	39,546,574.44	100
May 31, 1895	40,000,000.00			2,200,000.00				-37,205,223.53	4,994,776.47	56
May 31, 1896	40,000,000.00			1,200,000.00				-36,545,166.51	4,654,833.49	74
May 31, 1897	40,000,000.00							-36,520,332.47	3,479,667.53	100
May 31, 1898	39,757,200.00							-36,265,649.77	3,491,550.23	100
May 31, 1899	39,789,200.00							-36,158,657.08	3,630,542.92	100
May 31, 1900	39,789,200.00							-36,008,907.38	3,780,292.62	100
February 1, 1901 (Date of Reclassification)	11,936,700.00								11,936,700.00	100
May 31, 1901	11,936,700.00							80,283.70	12,016,983.70	100
May 31, 1902	12,000,000.00							1,129,986.19	13,129,986.19	100
May 31, 1903	16,800,000.00							1,330,139.94	18,130,139.94	100
May 31, 1904	16,800,000.00							1,739,353.15	18,539,353.15	100
December 31, 1904	17,000,000.00							1,991,744.21	18,991,744.21	100
December 31, 1905	29,635,500.00							2,812,232.03	32,447,732.03	100
December 31, 1906	29,791,300.00							3,999,548.02	33,790,848.02	100
December 31, 1907	29,793,300.00					2,500,000.00		1,996,613.92	34,289,913.92	93
December 31, 1908	29,793,300.00					2,500,000.00		3,445,776.72	35,739,076.72	93
December 31, 1909	29,793,300.00					2,416,000.00		3,662,987.70	35,872,287.70	93
December 31, 1910	29,793,300.00					1,921,000.00		4,026,707.73	35,741,007.73	95
December 31, 1911	29,793,300.00					1,910,000.00		4,393,908.62	36,097,208.62	95
December 31, 1912	29,793,300.00							5,035,470.69	34,828,770.69	100
December 31, 1913	29,793,300.00							5,633,367.93	35,426,667.93	100
December 31, 1914	29,793,300.00							2,052,475.09	31,845,775.09	100
December 31, 1915	29,793,300.00							2,367,586.60	32,160,886.60	100
December 31, 1916	29,793,300.00							3,039,839.58	32,833,139.58	100
December 31, 1917	29,793,300.00							3,353,742.23	33,147,042.23	100
December 31, 1918	29,793,300.00							3,468,151.36	33,261,451.36	100
December 31, 1919	29,793,300.00							4,524,453.43	34,317,753.43	100
December 31, 1920	29,793,300.00							5,723,745.13	35,517,045.13	100
December 31, 1921	15,033,200.00	14,896,650.00						6,821,882.54	36,751,732.54	59
December 31, 1922	21,085,800.00	18,963,201.50						7,618,954.31	47,667,955.81	60
December 31, 1923	26,489,075.50	19,085,701.50						5,955,530.18	51,530,307.18	63
December 31, 1925	29,236,510.00	29,085,750.00						7,488,608.80	65,810,868.80	56
December 31, 1922	37,015,179.15	30,335,750.00					23,741,645.84	9,718,686.80	100,811,261.80	70
December 31, 1926	40,913,220.00	30,335,750.00					23,821,632.84	12,175,885.18	107,246,488.02	72
December 31, 1927	45,148,630.00	30,335,750.00					23,821,632.84	15,735,625.24	115,041,638.08	74
December 31, 1928	50,119,600.00	30,333,900.00					25,789,984.57	25,195,334.81	131,438,819.38	77
December 31, 1929	56,038,390.00	30,333,900.00					31,084,077.34	35,887,638.65	153,344,005.99	80
December 31, 1930	61,853,840.00	30,333,900.00					31,192,657.34	45,582,512.41	168,962,909.75	82
December 31, 1931	68,251,170.00	30,333,900.00				25,000,000.00	32,771,453.59	41,555,520.23	197,915,043.82	72
December 31, 1932	75,309,740.00	30,333,900.00				25,000,000.00		39,132,176.55	169,775,816.55	67
December 31, 1933	81,884,510.00	30,333,900.00				25,000,000.00		40,323,130.09	177,541,540.09	69
December 31, 1934	86,029,910.00	30,333,900.00				25,000,000.00		40,668,213.47	182,033,023.47	70
December 31, 1935	85,753,350.00	30,317,950.00				24,079,399.89		42,099,803.09	182,250,502.98	70
December 31, 1936	85,750,420.00	30,317,950.00				23,913,000.00		44,112,452.81	184,393,822.81	71
December 31, 1937	85,746,770.00	30,317,950.00				23,913,000.00		37,657,414.97	177,635,134.97	69
December 31, 1938	85,741,360.00	30,317,950.00				23,913,000.00		41,604,980.75	181,577,290.75	70
December 31, 1939	85,734,670.00	30,317,950.00	34,829,000.00			70,000,000.00	312,503.00	41,955,033.00	263,149,156.00	49
December 31, 1940	85,726,260.00	30,317,950.00	34,819,000.00			70,000,000.00	312,994.00	44,132,991.00	265,309,195.00	49

THE NORTH AMERICAN COMPANY
THE WISCONSIN EDISON COMPANY, INC.
NORTH AMERICAN EDISON COMPANY

Schedule showing for each of the years from 1915 to 1935, inclusive, the largest debit balance of combined loan and accounts of operating subsidiaries, which had debit balances for the greater number of months during the year

	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928
The Electric Company of Missouri.....	\$456,000	\$703,000												
Milwaukee Light, Heat & Traction Company.....										\$ 215,000	\$ 229,000	\$ 383,000	\$ 385,000	
The St. Louis County Gas Company.....	196,000	58,000	\$ 127,000	\$ 159,000	\$194,000	\$ 144,000	\$ 76,000							
Union Electric Company of Missouri (formerly Union Electric Light and Power Company)...		407,000	1,000,000	1,140,000	830,000	2,019,000	469,000							
Union Electric Company of Illinois (formerly Union Electric Light and Power Company of Illinois)...									\$11,754,000	12,232,000				
Wisconsin Electric Power Company (formerly the Milwaukee Electric Railway and Light Company).....	774,000		3,484,000	4,469,000	432,000	6,145,000	8,123,000	\$2,892,000	1,532,000	2,363,000	3,179,000	3,891,000	3,948,000	\$1,250
Wisconsin Electric Power Company (former company; merged into The Milwaukee Electric Railway and Light Company in 1938)...							260,000	637,000	2,675,000	2,689,000		357,000	457,000	479,000
Wisconsin Michigan Power Company.....												2,827,000	4,536,000	2,221,000
Wisconsin Traction, Light, Heat & Power Company (merged into Wisconsin Michigan Power Company in 1927)...														
Wisconsin Gas & Electric Company.....	371,000	170,000	199,000	805,000	601,000	598,000			223,000			460,000	721,000	

ers from 1915 to 1935, inclusive, the largest debit balance of combined loan and advance
aries, which had debit balances for the greater number of months during the year

\$ 215,000 \$ 229,000 \$ 383,000 \$ 385,000

\$6,855,000 \$10,564,000 \$13,152,000 **\$17,800,000** \$4,342,000 \$3,354,000

~~\$11,754,000~~ 12,232,000

1,532,000	2,363,000	3,179,000	3,891,000	3,948,000	\$1,250,000
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250,000	647,000	\$186,000
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2,675,000	2,689,000	357,000	457,000	479,000
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2,827,000 4,536,000 2,221,000

460,000 / 721,000

223,000

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

THE NORTH AMERICAN COMPANY, Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION, Respondent

Subject to the approval of the Court, it is hereby stipulated by and between the parties herein as follows:

1. The petition to review the order of the Securities and Exchange Commission, dated April 14, 1942, filed in this Court on June 12, 1942, and the petition to review the order of the Securities and Exchange Commission, dated June 25, 1942, filed in this Court on August 21, 1942, shall be consolidated and treated as one case, and shall be briefed together and argued together upon the record heretofore certified by the Securities and Exchange Commission. The schedule with respect to the filing of briefs, oral argument and all other matters shall be that provided by the rules of Court with respect to the petition filed on June 12, 1942, except as modified by stipulation between the parties.

2. The time within which the brief of the respondent shall be filed and served shall be extended to thirty days after the service upon the respondent of a copy of petitioner's brief.

3. Upon the service of respondent's brief upon petitioner, the case shall be set for argument by stipulation of the parties on the first available date to be indicated by the Clerk, provided that such date shall not be earlier than fifteen days

after service of respondent's brief. Petitioner may file and serve a reply brief at least one day before oral argument.

4. There may be omitted from the printed record the testimony relative to Washington Railway and Electric Company and its subsidiaries, to North American Light & Power Company and its subsidiaries, and pages 2155 to 2168, inclusive, of the typewritten transcript of testimony before the Securities and Exchange Commission; and there may also be omitted from the printed record the following documents (the document number in each case being that assigned in the record certified to this Court by the Commission):

Documents Nos. 2, 3, 5, 6, 8, to 13, inclusive, 14 (other than the answer of The North American Company), 15, 22 to 34, inclusive, 42, 48, 54, 60, 66, 126, 130 to 146, inclusive, 148, 149, 154, 155, 158, 159, 160, 162, 169 to 172, inclusive, 174 to 176, inclusive, 178 to 183, inclusive, 186, 188, 191, 193 to 254, inclusive, 256, 260, 262 to 271, inclusive, 273, 274, 275, 276 (except as to certain persons), 277, 278, 280 to 291, inclusive, 292, (other than proposed findings), 293 to 306, inclusive, 308 to 330, inclusive, and 333 to 336, inclusive.

5. If the pending motion by the Commission in the United States Court of Appeals for the District of Columbia to dismiss the petition for review filed in said Court by Washington Railway and Electric Company and The Washington and Rockville Railway Company of Montgomery County shall be granted, the petitioner shall print such additional portions of the record certified by the Commission with respect to said companies and their respective subsidiaries, as shall then be agreed upon by further stipulation.

6. If after the opening briefs of petitioner and respondent have been filed, it appears to either party that any part of the record material to the issues framed by the briefs has been omitted from the printed record, a supplemental

volume of record shall be printed by the petitioner.

Dated, New York, October 2, 1942.

Sullivan & Cromwell, Counsel for Petitioner. John
F. Davis, Solicitor. Milton V. Freeman, Assistant
Solicitor, Counsel for Respondent.

So Ordered. October 6th, 1942. Thomas W. Swan, C. J.

United States Circuit Court of Appeals for the Second Circuit. The North American Company, Petitioner, v. Securities and Exchange Commission, Respondent. Consent and Order. Sullivan & Cromwell, Attorneys for Petitioner, 48 Wall Street, New York, N. Y. United States Circuit Court of Appeals, Second Circuit. Filed Oct. 6, 1942. D. E. Roberts, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 105—October Term, 1942.

(Argued November 10, 1942 Decided January 12, 1943.)

THE NORTH AMERICAN COMPANY,

Petitioner,

—v.—

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Petitions to review two orders of the Securities and Exchange Commission entered in a proceeding initiated by the Commission under section 11 (b) (1) of the Public Utility Holding Company Act of 1935. 15 U. S. C. A. §79k(b) (1). By order of this court, upon stipulation, the petitions were consolidated. Orders affirmed.

Before:

SWAN, AUGUSTUS N. HAND and CHASE,

Circuit Judges.

SULLIVAN & CROMWELL, Attorneys for petitioner,
Charles E. Hughes, Jr., of counsel.

JOHN F. DAVIS, Solicitor, Milton V. Freeman,
Ass't Solicitor, Roger S. Foster, Counsel,
Public Utilities Division, David K. Kadane,
Maurice C. Kaplan and Jerome S. Katzin,
Attorneys, for the respondent.

SWAN, Circuit Judge:

This case is before us on petitions of The North American Company, filed pursuant to section 24(a) of the Public Utility Holding Company Act of 1935, 15 U. S. C. A. §79x(a), to review two orders made by the Securities and Exchange Commission in a proceeding initiated by it under section 11 (b) (1) of the Act, 15 U. S. C. A. §79k(b) (1). The orders were entered on April 14, 1942 and June 25, 1942, respectively. The opinions of the Commission in support of them will be reported in The North American Company, 11 S. E. C. — and —. The April order directed North American to divest itself of all its securities, with minor exceptions, other than those of Union Electric Company of Missouri and its subsidiaries (hereafter referred to as the St. Louis system). The June order denied North American's motion for leave to present further argument that the Commission lacks power to designate the particular system to be retained as its "single integrated public-utility system." North American's petitions to this court raise questions as to the construction and application of section 11(b) (1) and challenge its constitutional validity.

The North American Company was organized in 1890 under the laws of New Jersey. Its principal office is in the City of New York, N. Y. Its business consists in acquiring and holding for investment stocks and other securities, principally in the electric utility field. It is the top holding company in a system containing 80 companies and operating in 17 states and the District of Columbia. At no time has it engaged in the business of managing the operations of its public utility operating subsidiaries, or selling them supplies, engineering services or the like. It has, however, furnished financial advice and assistance and sponsored the in-

¹ The opinions may be found in C. C. H. Fed. Securities Law Serv., '43, §75,271 and §75,297.

terchange of operating information among the subsidiaries. On February 25, 1937 North American registered under the Act² and thus became "a registered holding company" within the meaning of section 11 (b) (1). This section makes it the duty of the Commission, "as soon as practicable after January 1, 1938," to require each registered holding company to take such action as the Commission may find necessary to limit the operations of the holding company system to "a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations" thereof. A proviso permits a registered holding company "to continue to control one or more additional integrated public-utility systems" if they satisfy the requirements of clauses (A) (B) and (C) of the section. The orders complained of limit North American's operations to the St. Louis system. Such other facts as are required to be stated will appear in the course of our discussion.

The first matter for consideration is the petitioner's contention that it was premature for the Commission to proceed with forced divestment under section 11 (b) (1) before it had made the studies and published its recommendations as required by section 30, 15 U. S. C. A. § 79z-4. The issue was presented by a motion, denied by the Commission, to hold the proceeding in abeyance pending publication of such recommendations. It is argued that Congress expected many holding companies, if given time and guidance, voluntarily to rearrange their affairs; the operation of section 11 (b) (1) was postponed to give the time, and the Commission was instructed to supply the guidance by making public its recommendations of administrative standards in respect to the matters referred to in section 30; hence, the order of

² Registration did not waive its right to future challenge of the validity of section 11. See *Electric Bond & Share Co. v. S. E. C.*, 303 U. S. 419, 435.

April 1942 was premature as no such guidance had been supplied. Whatever may have been the expectation of Congress as to voluntary readjustments, we can find nothing in the statutory language justifying a holding that the recommendations which the Commission is directed to "make public from time to time," are a condition precedent to invoking the procedure of section 11 (b) (1) to compel integration. If completion of *ex parte* studies under section 30 were a prerequisite to action under section 11 (b), it should equally be so to action under section 11 (c) or under section 10 (c) (1), 15 U. S. C. A. § 79j (c) (1). Since such studies and recommendations are apparently to be made "from time to time" throughout the life of the Commission, to hold that enforcement of other provisions of the statute are dependent on completion of the studies would defer their enforcement indefinitely. We cannot impute such an intention to Congress. If it be argued that enforcement as to a particular holding company should be deferred until a study has been made and recommendations published as to it, a sufficient answer is that the company must be accorded a hearing before integration can be ordered. We are satisfied that section 30 should be construed merely as an administrative direction to the Commission, not as a condition precedent to conducting a proceeding under section 11 (b) (1). Compare *United States v. Morgan*, 222 U. S. 274. For a discussion of the specific point see *Commonwealth & Southern Corporation*, 11 S. E. C. ——. ³

We now turn to the petitioner's contentions relating to the interpretation and application of section 11 (b) (1). The first is as to selection of a single integrated public utility system to be retained (which may conveniently be called the "principal" system). The selection of a principal system must naturally precede any final determination of what "other businesses" are "reasonably incidental or economi-

³ C. C. H. Fed. Securities Law Serv., '43, § 75,285.

cally necessary or appropriate to the operations of such" principal system, as well as what "additional integrated public-utility systems" the holding company is to be permitted "to continue to control." Where, as in this case, there are found to be several integrated public utility systems,⁴ any one of which might reasonably be chosen as the principal system, is the choice to be made by the holding company or by the Commission? We may assume, without so deciding, that the privilege of selecting its principal system should, during preliminary stages of the section 11 (b) (1) proceeding, be accorded the holding company. This was done and only after North American had refused to express a preference between the several integrated public utility systems, was the St. Louis system selected by the Commission as the principal system for retention. No contention is made that the Commission made an unreasonable selection or that the selection of a different system would be more beneficial to North American. Its argument is merely that it cannot now tell which two of the three systems (St. Louis, Cleveland and Wisconsin) will be most marketable; that section 11 (c) gives it at least one year for compliance with the divestment order; and therefore it may select its principal system at any time within the period allowed for compliance. We do not think the statute contemplates such deferment of selection. It would necessarily result in delays. The Commission's duty is to act under section 11 (b) "as soon as practicable," and due diligence in complying with the order is prescribed by section 11 (c). Nor do we see that deferment in selecting the principal system is necessary to ade-

⁴ The Commission found that the electric operations in each of the areas centering at St. Louis, Washington, Cleveland, Detroit and Wisconsin, respectively, constitute a single integrated public utility system within the meaning of the Act. North American's contentions in the aspect now under discussion are confined to the St. Louis, Cleveland and Wisconsin systems.

quate protection of a holding company against circumstances which may arise during the period allowed for compliance with the order. If changes occur in "the conditions upon which the order was predicated," the Commission is authorized by subsection (b) to revoke or modify any order previously made thereunder. Under the circumstances disclosed by this record we see no error in the Commission's selection of the St. Louis system as the principal system for retention.

It is next contended that the Commission erred in limiting North American to the retention of a single integrated system; that under the (A) (B) (C) standards of section 11 (b) (1), properly interpreted and applied, it is entitled to retain as additional or secondary systems the groups of subsidiaries which constitute the Cleveland and the Wisconsin systems. The (A) standard requires a finding that the additional system cannot be operated independently "without the loss of substantial economies which can be secured by the retention of control" by the holding company. It has been the practice of North American to furnish financial advice and, on occasions, direct financial assistance to its subsidiaries, and to sponsor the interchange of statistics and operating information among them. Such practices, it is urged, have been of great value to the Cleveland and the Wisconsin systems and a discontinuance of their relations with North American will cause them the loss of "substantial economies." After considering these arguments and the evidence presented in their support, the Commission refused to find that the additional systems could not be operated independently without the loss of substantial economies. Whether economy is achieved by centralized control is always a doubtful question and one peculiarly fitted for decision by an administrative agency staffed by experts. On such an issue a court cannot review or reweigh the evidence. See *Morgan Stanley & Co. v. Securities Exchange Com'n*,

126 F. 2d 325 (C. C. A. 2); section 24(a) of the Act, 45 U. S. C. A. §79x(a). With the Commission's ruling that "substantial economies" means important economies and not merely something more than nominal, we are in accord.

The Commission also found that neither additional system met the (C) standard. But we need not consider the correctness of this ruling, nor the interpretation placed upon clause (B), because the failure to satisfy the requirements of clause (A) precludes retention of the additional systems, since all three clauses must be satisfied to secure the right to retain more than the primary system.

North American complains that divestment has been ordered of its investments in three non-utility companies and that this has resulted from an erroneous construction of the "other business" clauses of section 11 (b) (1). The section requires a registered holding company to limit its operations to a single integrated public utility system, "and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public utility system." Then follows the proviso dealing with additional integrated public utility systems, and next comes the following provision:

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems, the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

The Commission interpreted these "other business" clauses to permit retention only when it affirmatively appears "that

the public interest will be furthered by retention of a non-utility interest by reason of its relation 'to economy of management and operation' of a public utility system or systems or 'the integration and coordination of related operating properties.' " This conclusion is consonant with the policy of the Act expressed in section 1 (b) (4), 15 U. S. C. A. §79a(b) (4) which declared that "the national public interest" is or may be adversely affected "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties." We agree with the Commission's interpretation. It is apparently not disputed that the three other businesses are unrelated to the operations of the St. Louis system. Consequently no error appears in ordering their divestment.

There remains for consideration the petitioner's attack upon the constitutional validity of section 11 (b) (1). It is urged that under the commerce clause of the Constitution, Art. I, sec. 8, cl. 3, Congress does not possess the power it has sought to exercise by this section of requiring a registered holding company to divest itself of all securities other than those related to a single integrated public utility system. Many of North American's subsidiaries are engaged in interstate commerce, but the ownership of securities issued by them does not of itself constitute engaging in interstate commerce; the ownership of property is characteristically an intrastate matter. Such ownership can be asserted to be subject to congressional regulation under the commerce clause only on the ground that it so affects interstate commerce as to make regulation of it an appropriate means to the attainment of a legitimate end. See *United States v. Wrightwood Dairy Co.*, 315 U. S. 110, 119; *United States v. Darby*, 312 U. S. 100, 118. Counsel argues that section 11 (b) (1) does not make such effect the test of its application;

it assumes that the mere fact that a holding company has registered under section 5⁵ of the Act indicates a sufficient relationship to interstate commerce to support the asserted power, and it provides for divestment orders without any specific finding by the commission or by a court that the company is engaged in interstate commerce or that interstate commerce will be adversely affected by retention of the securities it owns. But we think the necessity for such specific finding is eliminated by the statutory scheme. Section 1 expounds the policy underlying the necessity for control of holding companies as defined in section 2(a)(7). It declares them to be affected with a national public interest because, among other things, "their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage,"⁶ and the extension of their activities over many states makes difficult, if not impossible, effective state regulation of public utility companies.⁷ It is further declared that the national public interest is or may be adversely affected when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coördination of related operating properties.⁸ Section 3 provides administrative procedure by which a holding company can obtain exemption from any provision of the Act, if it and its subsidiaries are predominantly intrastate in character.⁹ North American did not avail itself of this administrative remedy; nor does it now assert that it is entitled to exemption. On the contrary its activities and those of its subsidiaries clearly bring it within the class of holding companies which section 1 declares affect interstate

⁵ 15 U. S. C. A. §79e.

⁶ Section 1(a)(4), 15 U. S. C. A. §79a(a)(4).

⁷ Section 1(a)(5), 15 U. S. C. A. §79a(a)(5).

⁸ Section 1(b)(4), 15 U. S. C. A. §79a(b)(4).

⁹ Section 3(a)(1) and (2), 15 U. S. C. A. §79e(a)(1) and (2).

commerce and require regulation. Hence the essence of the petitioner's argument comes down to the contention that the retention of securities, which section 11(b) (1) assumes to regulate, is a purely intrastate matter and beyond congressional power.

That the power of Congress to regulate interstate commerce extends to regulation through legislative action of activities intrastate which have a substantial effect on the commerce cannot be, and is not, disputed. In *United States v. Darby*, 312 U. S. 100 at page 120, the court noted that in such legislation determination whether the intrastate activities have the prohibited effect on the interstate commerce, has sometimes been left to the courts, sometimes to an administrative tribunal, and "sometimes Congress itself has said that a particular activity affects the commerce * * *". The statute there under discussion, like the one now before us, belonged to the class last mentioned. In passing on the validity of that class of legislation the opinion states that "the only function of the courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power." To what extent that power can reach has been very recently demonstrated by *Wickard v. Filburn*, 317 U. S. —, decided November 9, 1942. There it was held that a small farmer's production of wheat for his own use could be regulated under the Agricultural Adjustment Act of 1938, as amended, because in the aggregate the consumption of home-grown wheat by many small farmers affects the price and market conditions of wheat transported between the states. If the commerce clause has a sweep so broad as that, we cannot say that Congress has exceeded its power in regulating the ownership of securities by a holding company whose subsidiaries are engaged in interstate commerce.

The final argument is that section 11 (b) (1) violates the Fifth Amendment. The guaranty of due process demands

only that the law shall not be "unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia v. New York*, 291 U. S. 502, 525. The object sought by the statute under consideration is the elimination of abuses in the public utility holding company field. It is argued that the divestment of securities required by section 11 is not a reasonable means to that end because it will involve a destruction of values. We do not think the argument can prevail. Congress did not think it could accomplish its object solely by regulating future transactions, although many of the provisions of the Act apply only to them. To eliminate existing conditions which adversely affect the public interest Congress considered it necessary to enact section 11. The means selected are clearly adapted to the end in view. The wisdom of the legislation and the appropriateness of the remedy chosen is not the concern of the courts. See *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, 394. Compelling the holding company to dispose of its securities is not the same as condemning private property for public use without paying just compensation. Under section 11 (c) the petitioner is given a year within which to comply with the order and may on proper showing obtain an additional period not exceeding one year. If divestment can be effected by distribution in kind, there may be no loss in values. If, as petitioner contends, such distribution will be impossible and a liquidation by sale becomes necessary, the process may be painful to its common stockholders, but we cannot say that the remedy selected by Congress is so unreasonable, arbitrary or capricious as to constitute taking property without due process.

Orders affirmed.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

THE NORTH AMERICAN COMPANY, Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION, Respondent

DECREE

This cause came on to be heard at this term and was argued by counsel, and the Court having considered the briefs of the parties and the arguments of counsel and being fully advised in the premises and having filed its opinion herein, it is

Ordered, Adjudged and Decreed that the orders of the Securities and Exchange Commission entered on April 14, 1942 and June 25, 1942 in the cause entitled "In the Matter of the North American Company and its Subsidiaries, File No. 59-10," be and they hereby are affirmed.

Learned Hand, Thomas W. Swan, Circuit Judges.

Dated: — — —.

Approved as to form. Sullivan & Cromwell, Attorneys for the Petitioner. John F. Davis, Solicitor; Milton V. Freeman, Asst. Solicitor, Attorneys for Respondent.

[Endorsed:] No. American Co. v. Sec. & Exch. Comm.
Order. United States Circuit Court of Appeals, Second
Circuit. Filed Jan. 28, 1943. D. E. Roberts, Clerk.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW
YORK

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from I to XXIX and 1 to 4012, inclusive in 10 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of The North American Company, Petitioner, against Securities and Exchange Commission, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this sixth day of February, in the year of our Lord one thousand nine hundred and forty-three, and of the Independence of the said United States the one hundred and sixty-seventh.

D. E. Roberts, Clerk. (Seal.)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM,
1942

No. 721

ORDER ALLOWING CERTIORARI—Filed March 1, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.